

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JACK D. BROWN**

Claimant

VS.

**BEACHNER SEED COMPANY**

Respondent

AND

**LIBERTY INSURANCE CORPORATION**

Insurance Carrier

Docket No. 1,019,519

**ORDER**

Respondent and its insurance carrier (respondent) request review of the September 23, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

**ISSUES**

The ALJ ordered respondent to pay medical expenses incurred by the claimant in the amount of \$605 pursuant to a previous order of the court, and \$3,278.60.<sup>1</sup> Both of these bills represent costs associated with home health care or nursing home care for claimant who was injured in a compensable injury on May 28, 2004.

The respondent argues that there is no causal relationship between the need for nursing home care and claimant's work-related injury of May 28, 2004. Respondent contends that claimant has not provided any medical evidence that he needs to be in a nursing home as a result of his work-related injury. Rather his present need for nursing home care is due to his unrelated heart problems.

Claimant argues that the Board does not have jurisdiction to hear this appeal and therefore the Board should dismiss the respondent's appeal pursuant to K.S.A. 44-534a.

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<sup>1</sup> ALJ Order (Sept. 23, 2005).

The issues to be addressed by this appeal are as follows:

1. Whether the Board has jurisdiction to consider this matter; and if so,
2. Whether the claimant's need for home health and nursing home care are causally related to his work injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing. The Board has jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the ALJ exceeded his or her jurisdiction.<sup>2</sup> In addition K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

In this instance, respondent is arguing that claimant's need for treatment is not causally related to his work-related accident. Rather, that his present need for medical treatment stems from an intervening heart event, wholly independent from his May 28, 2004 accident.

The Board finds that it does indeed have jurisdiction to consider this matter. Distilled to its essence, respondent is arguing that claimant's need for medical treatment did not arise out of and in the course of his work-related injury. This is a jurisdictional issue. Thus, the Board has the authority to consider the ALJ's preliminary hearing Order.

This matter was first litigated before the ALJ in February 2005. At that hearing, the issue was whether respondent should be made to pay for claimant's ongoing home health care. At that point in time, compensability of the May 28, 2004 accident was not disputed. Claimant fell seven feet out of a truck, hitting his head, shoulders, back and leg before

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<sup>2</sup> K.S.A. 44-551(b)(2)(A).

passing out. It was also uncontroverted that claimant's course of care has been difficult. He has been in and out of the hospital due to blood clots and other complications. Following one discharge, he required a ramp to walk in and out of his house. On March 19, 2005, claimant tripped on a screw in the ramp and broke his hip. Apparently, when he was discharged from the hospital, his family could not care for him appropriately and home health care was suggested by a physician who had been treating claimant at the hospital.

At the preliminary hearing it was respondent's contention that no physician had concluded claimant required home health care. This position was rejected and the ALJ issued an order directing respondent to provide home health care until no longer authorized by the treating physician.

A second preliminary hearing was held on August 24, 2005 and much the same issues were addressed, although the focus was on nursing home care rather than home health care as claimant was now confined to a facility for rehabilitation. Claimant's counsel indicated that claimant's fall on the ramp caused him additional injuries that necessitated a stay in a nursing home. No medical records were produced at this hearing, just bills indicating that service had been provided. Claimant's daughter, who has been his primary care taker, testified that -

. . .there's a lot of things that happened to him while he was in the hospital. His heart, blood pressure, everything bottomed out. They rushed him by ambulance to Joplin. He went in to see what was wrong with his heart and his blood pressure, found out that one part of the [sic] his heart wasn't working right and they don't know why that is being like that right now. They found that out, sent him back to Parsons to rehabilitate him on his hip to get him walking. He started hemorrhaging. They still don't know why he has major bleeds like he does. . . . He's slowly but surely deteriorating since he fell off the Beachner truck because my father was just fine before that fall.<sup>3</sup>

Much like at the earlier hearing, respondent's primary contention was that the claimant's need for nursing home care was due to "significant heart problems"<sup>4</sup> rather than to his work-related injury.

The Board has considered respondent's arguments and concludes the ALJ's preliminary hearing Order should be reversed. A careful review of the record reveals a significant lack of evidence regarding the sequence of events and the reason why claimant presently requires nursing home care. Following his initial injury, claimant was able to remain in his home with help from his daughter and home health care. He subsequently

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<sup>3</sup> P.H. Trans. (Aug. 24, 2005) at 11.

<sup>4</sup> Respondent's Brief (filed Oct. 11, 2005) at 2.

experienced another fall on a ramp outside his home and while in the hospital under treatment for that fall, he suffered complications apparently due to a heart condition. It is wholly unclear from the record whether claimant presently requires nursing home care for his injuries due to the fall or whether it is due to this ill-defined heart condition vaguely described by his daughter during her testimony. It is equally unclear whether the complications to his heart are causally related to the underlying injury, his subsequent fall or wholly unrelated to his work-related condition. All of these unanswered questions effectively defeat claimant's request that the medical expenses associated with his nursing home care be paid by respondent. Having failed to meet his burden of proof on the causal link between his compensable injury and his present need for nursing home care, the ALJ's preliminary hearing Order must be reversed.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Thomas Klein dated September 23, 2005, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November, 2005.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
John R. Emerson, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director